

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By **CHAIRMAN AL BISHOP**, on March 12, 1999 at 3:15 A.M., in Room 410 Capitol. **VICE CHAIRMAN FRED THOMAS** was **ACTING CHAIRMAN**.

ROLL CALL

Members Present:

Sen. Al Bishop, Chairman (R)
Sen. Fred Thomas, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. John C. Bohlinger (R)
Sen. Bob DePratu (R)
Sen. Dorothy Eck (D)
Sen. Eve Franklin (D)
Sen. Duane Grimes (R)
Sen. Don Hargrove (R)

Members Excused: Sen. Dale Berry (R)
Sen. Chris Christiaens (D)

Members Absent: None.

Staff Present: Susan Fox, Legislative Branch
Martha McGee, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 136, HB 269, 3/9/1999
Executive Action: HB 126; HB 275; HB 580; HB
136; HB 269; HB 583; HB 44; HB
551

HEARING ON HB 136

Sponsor: REP. CAROL WILLIAMS, HD 69, Missoula

Proponents: **Bill Jensen, General Council for Blue Cross Blue Shield**
 Claudia Clifford, Insurance Commissioners Officers
 Mary Allen, Montana Medical Benefit Plan

Opponents: **None**

Opening Statement by Sponsor:

REP. CAROL WILLIAMS, HD 69, Missoula opened on her bill. This is an administrative bill for the Montana Comprehensive Health Association. The Association was established in 1985 by the legislature as a non-profit organization for the purpose of supporting and providing insurance for people who were previously uninsurable. This program is a paid for by assessments on all insurers who are licensed to do business in Montana. They have two plans.

EXHIBIT (phs56a01)

One is an association plan, which is a plan to cover high risk customers. These people must have been turned down by two insurers in order to be eligible for this plan. It is quite expensive, but it is something for folks who previously were not able to have any.

The second plan is a portability plan. This is to solve the needs of people who, for example, have been in a group plan previously, used there benefits up, and then have began to work for a small company who cannot provide insurance for them. These people can buy insurance through the portability plan.

There are people in almost every county in Montana who are taking advantage of these programs. There is mention in the bill to authorize the lead carrier, currently Blue Cross Blue Shield in Montana, to lend money for the purposes of cash flow. Also, the bill allows for a public member on the Board to vote on issues.

In addition, there are occasions when there is someone on the board who is not able to do as much work as they thought that they would be able to do. This bill would allow the insurance commissioner to replace any Board member that was not able to fulfill their duties.

The Association is to make their assessments on an annual basis rather than a fiscal year basis. The bill decreases the look-back time from five years to three years. There are other bills that have passed through Committees in order to fund the Association.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 5.2}

Proponents' Testimony:

Bill Jensen, General Council for Blue Cross Blue Shield, rose in support of the bill. One of the things that the Association Board works with are folks that have very poor health and use a significant amount of health care services. One of the things that this would allow, in addition to the other plans, is to allow a managed care plan into the menu of options that are available. At the present time, there are approximately 1264 people on the two plans of the association.

{Tape : 1; Side : A; Approx. Time Counter : 5.2 - 7.1}

Claudia Cliffard, Insurance Commissioners Officers, rose in support of the bill. This bill was put together by the unanimous request of the Board with the provisions included.

{Tape : 1; Side : A; Approx. Time Counter : 7.1 - 7.4}

Mary Allen, Montana Medical Benefit Plan, rose in support of the bill.

{Tape : 1; Side : A; Approx. Time Counter : 7.4 - 8}

Opponents' Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

REP. WILLIAMS closed on her bill. There is not a fiscal implication for Montana created by this bill. The Montana Comprehensive Health Association is beneficial to many families across the state.

{Tape : 1; Side : A; Approx. Time Counter : 8 - 9.3}

HEARING ON HB 269

Sponsor: REP. BRAD MOLNAR, HD 22, Laurel

Proponents:

Opponents:

Opening Statement by Sponsor:

REP. BRAD MOLNAR, HD 22, Laurel, opened on his bill. All of the amendments on this bill were brought forth by the Department. There are roughly 10,000 charges of child abuse/neglect. Six

thousand of those are dismissed because there is nothing going on. The other 4,000 range from cases that need to be carefully watched to the possible 200 cases which the children are separated from their parents. What this bill says, is that should one find themselves in that situation, one can choose the person of their choice to serve as your advocate. The bill is about people helping people. A document, court record or other information may not be disclosed if it is determined to be detrimental to the child or harmful to another individual. This means that confidentiality is maintained. A family advocate may not limit delay in any way in favor of the Departments ability to conduct or complete an investigation as required by law.

{Tape : 1; Side : A; Approx. Time Counter : 9.3 - 15.6}

Proponents' Testimony:

Betty Asplin, rose in support of the bill. This bill is a right for families who are distraught when they have their children taken away.

EXHIBIT (phs56a02) EXHIBIT (phs56a03)

{Tape : 1; Side : A; Approx. Time Counter : 15.6 - 17.2}

Eunice Ash, rose in support of the bill. The system is hard on families. She has seen first hand how the system works. She served as the advocate for her family and other people. We need advocates. If this law would pass, advocate rights would be made available. We need to have this bill for the children.

EXHIBIT (phs56a04)

{Tape : 1; Side : A; Approx. Time Counter : 17.2 - 22.5}

Frank Fitzgerald rose in support of the bill. The advocate is vitally needed. It fill the void that is created by the lack of family representation in court. Parental, child, and state rights are presented, but not family rights. The family as a whole needs to have something going for it when it comes to the court and the system. As the bill is read, says that the family advocate can keep track of the case so that the pulse of the case is being read by the advocate. Often times, visitation rights are not on the DFS agenda. From the point of view of the family advocate, it is like a watch dog effect.

EXHIBIT (phs56a05)

{Tape : 1; Side : A; Approx. Time Counter : 22.5 - 25.2}

Velma Fitzgerald rose in support of the bill. One reason this bill is good is because it is no way a divisive bill that would pit one side against the other. It is for the families and for the children. It tries to reunite the families. It also will defuse any situation which might otherwise be questionable with the social workers or DFS or the families. This bill acts as a

feeling process to get everyone together. This may save a lot of hurt, a lot of anger, and a lot of bad things that come out of separating children from their biological families. This bill is people helping people, families helping families and individuals helping individuals.

EXHIBIT (phs56a06)

{Tape : 1; Side : A; Approx. Time Counter : 25.2 - 27.8}

Opponents' Testimony: None

Questions from Committee Members and Responses:

REP. HARDGROVE asked if this advocate could be appointed and still ignored. He also inquired as to what the relationship between an advocate and a guardian ad litem would be. **Chuck Hunter** said that the guardian ad litem would be appointed to protect the interest of the child and do what they see to be in the best interest of the child. The family advocate would typically be chosen by the parents and likely represent the interest of the parents views. There may be interaction between the guardian ad litem and the family advocates, but they are pursuing their own independent views of what is right, given that they have two different parties to represent.

{Tape : 1; Side : B; Approx. Time Counter : 19.9 - 21.2}

REP. HARDGROVE asked what would happen if there were a conflict between the guardian ad litem and the family advocate. **Mr. Hunter** said that would not be unusual for that to happen. The guardian ad litem, representing the child, might see things differently from the family advocates. In the course of practice of the various hearing that go on, those two perspectives would be presented and the judge would fair out the facts and perspectives and make a decision based upon all the information.

{Tape : 1; Side : B; Approx. Time Counter : 21.2 - 22.2}

SEN. DEPRATU asked that if in the event of a good friend being an advocate, how far can they go in expressing the ones interest.

REP. MOLNAR said that there is a list to consider advocates from.

SEN. DEPRATU asked what kind of liability the advocates would have if they were there to represent a point of view and did not do fulfill their expectations. **REP. MOLNAR** said that the advocate is immune from liability within the meaning for the actions conducted by the family advocate authorized by this law.

{Tape : 1; Side : B; Approx. Time Counter : 22.2 - 26.1}

SEN. HARDGROVE asked the sponsor to comment on the sunset provision. **REP. MOLNAR** said that it was felt that there is some concern among the House Judiciary Committee that perhaps some

advocates would be too aggressive and muck up the works. A deadline would help make individuals work with people as opposed to against people.

{Tape : 1; Side : B; Approx. Time Counter : 26.1 - 27.4}

SEN. HARDGROVE asked if it would be a good idea to have this effective immediately. **REP. MOLNAR** said that if this is passed unamended, that would be a good idea.

{Tape : 1; Side : B; Approx. Time Counter : 27.4 - 27.9}

SEN. ECK said that the key to this seems to be to have an adequate supply of people in who would serve as advocates. A state employee cannot fulfill this role. She inquired as to whether a counselor working with a family to be a state employee. **Mr. Hunter** said that he does not believe so but he will look into that.

SEN. ECK asked about the final option of the family advocacy group that is registered in the state as a non-profit. **Mr. Hunter** said that he is not aware of that system being around in other states. **REP. MOLNAR** said that there are a lot of groups out there that currently work with these families it would be easy for them to step in.

{Tape : 1; Side : B; Approx. Time Counter : 27.9 - 30.9}

SEN. ECK said that Judge Olsen has been trying to sort out the process and procedures that everybody uses. It seems that with some training, groups that could be advocates may do so and not be fully aware of the process. **REP. MOLNAR** said that it is hard for anyone to be prepared for the job of advocate. In this case, someone other than a distraught parent, should be able to step in.

{Tape : 1; Side : B; Approx. Time Counter : 30.9 - 33.1}

Closing by Sponsor:

REP. MOLNAR closed on his bill. There is nothing in this bill that an attorney cannot already do on behalf of his client. We are simply telling people that they have a right to have somebody stand in for them. This bill will allow compression of time frame. This bill will help conserve our resources for the cases that are real and not the six thousand that are dismissed. People fear social services because they think it is deep and dark when really it is just misunderstood. This will help shed some light on the situation. This bill stops the hurting quicker.

{Tape : 1; Side : B; Approx. Time Counter : 33.1 - 35.8}

EXECUTIVE ACTION ON HB 126

Susan Fox explained that the amendments have been prepared by **Al Smith** with the Trial Lawyers Association and **Drew Dawson** with the Department of Public Health and Human Services.

Motion: SEN. BOHLINGER moved that HB 126 BE CONCURRED IN.

Motion: SEN. BARTLETT moved that AMENDMENT#HB012601.asf
BE ADOPTED.

EXHIBIT (phs56a07)

Discussion: SEN. THOMAS said that this amendment would reinstate the language that was stricken in the House.

SEN. BARTLETT said that the testimony in the House, as pointed out by the Trial Lawyers, the two levels of protection were reversed. The people who actually provide the resuscitation had less immunity than the people who maintain the machines or give the training. The House amendments attempt, but did not succeed, to switch that around. The amendments before the Committee are for the purpose of getting the levels of protection straightened out.

SEN. THOMAS asked if the amendment would replace wilful and wanton with gross negligence. SEN. BARTLETT said that she believes that the amendment sets the same level of immunity for the people who are actually providing resuscitation. Mr. Smith said that gross negligence and wilful or wanton misconduct is the language for all of the good Samaritan acts. This amendment drops the gross negligence from the wilful and wanton misconduct.
{Tape : 1; Side : B; Approx. Time Counter : 35.8 - 42.3}

Vote: Motion carried 6-0.

SEN. BOHLINGER said that this is a good bill and the Committee should move it forward.

Vote: Motion carried 8-0.

{Tape : 2; Side : A; Approx. Time Counter : 0 - 0.5}

EXECUTIVE ACTION ON HB 275

Motion: SEN. ECK moved that HB 275 BE CONCURRED IN.

Ms. Fox said that the amendment allows for a biennial report with annual updates. That allows the Department to only have to make

changes in the areas they wish to change over the course of the year.

Motion/Vote: SEN. ECK moved that AMENDMENT#HB027501.ads
BE ADOPTED. Motion carried 6-0.

EXHIBIT (phs56a08)

Vote: Motion carried 8-0.
{Tape : 2; Side : A; Approx. Time Counter : 0.5 - 4.7}

EXECUTIVE ACTION ON HB 580

The Committee decided to hold off on this bill until SEN. BARTLETT could talk with the Department of Corrections.
{Tape : 2; Side : A; Approx. Time Counter : 4.7 - 7.3}

EXECUTIVE ACTION ON HB 136

Motion: SEN. ECK moved that HB 136 BE CONCURRED IN.

Discussion: SEN. BOHLINGER said that this bill would provide insurance to those families that need it as a last resort.

Vote: Motion carried 8-0.
{Tape : 2; Side : A; Approx. Time Counter : 7.3 - 9.1}

EXECUTIVE ACTION ON HB 269

Motion: SEN. ECK moved that HB 269 BE CONCURRED IN.

Discussion: SEN. ECK said that one of the things that this bill does that was not mentioned in the hearing is that in discussing this bill with her County Attorney, he felt that this bill is very good. Quite frequently people do not have an attorney until the last stages. Some of these cases would be very hard to defend if they were appealed.

Mr. Hunter commented that there are things in this proposal that may cause some harm to the process. On the other hand, the Department is under the gun so often, and this bill helps deal with that.

Vote: Motion carried 8-0.

{Tape : 2; Side : A; Approx. Time Counter : 9.1 - 12.2}

EXECUTIVE ACTION ON HB 583

Motion: SEN. BOHLINGER moved that HB 583 BE CONCURRED IN.

Discussion: SEN. BOHLINGER said that this bill is asking for those people who trained with certain specialties to assist in disasters, who are state employees, be allowed to deploy their skills in the disaster areas. This is good public policy that would allow Montanans to help Montanans.

SEN. BARTLETT said that the one thing that she was concerned with was the question regarding what the state and the legislature say if other volunteer, charitable organizations make the same kind of request.

SEN. BOHLINGER said that he can't think of a case in which the members of an organization would have the same kind of special training. If the situation does arise, the legislature can deal with it.

SEN. DEPRATU said that he would have to vote against the amendment.

Vote: Motion carried 7-1 with DePratu voting no.

{Tape : 2; Side : A; Approx. Time Counter : 12.2 - 20.4}

EXECUTIVE ACTION ON HB 44

Motion/Vote: SEN. BISHOP moved that HB 44 BE CONCURRED IN.

Motion carried 6-0.

{Tape : 2; Side : A; Approx. Time Counter : 20.4 - 22.9}

EXECUTIVE ACTION ON HB 551

Motion: SEN. DEPRATU moved that HB 551 BE CONCURRED IN.

Ms. Fox spoke to the amendment. It would allow for certain General Fund moneys to be transferred to tribes starting family assistance plans. The amendments were requested by REP. COBB.

SEN. ECK said that the bill has the potential to save the state money if the tribes decide to be their own provider.

Motion/Vote: **SEN. HARGROVE** moved that **AMENDMENTS#HB055102.agp**
BE ADOPTED. Motion carried 6-0.

EXHIBIT (phs56a09)

Vote: Motion **carried 8-0.**

EXECUTIVE ACTION ON HB 399

The Committee read information provided by **Kip Smith**. **EXHIBIT** (phs56a10)

Motion: **SEN. DEPRATU** moved that **HB 399 BE TABLED.**

SEN. ECK would rather see the Committee take no action instead of tabling the bill.

Vote: Motion **failed 5-5.**

The Committee decided to wait on the bill before taking further action.

{Tape : 2; Side : B; Approx. Time Counter : 20.4 - 29.9}

ADJOURNMENT

Adjournment: 4:45 A.M.

SEN. AL BISHOP, Chairman

MARTHA MCGEE, Secretary

DELILA CROUCHER, Transcriber

AB/MM

EXHIBIT (phs56aad)